

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6144 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SHASHIKANT AMARCHAND HINDOCHA

Versus

STATE OF GUJARAT

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Appearance:

MR HR PRAJAPATI for Petitioner

Mr. N.D.Gohil, ASSTT. GOVERNMENT PLEADER for  
Respondent no.1.

MR SUNIL C PATEL for Respondent No. 4

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CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 14/10/97

ORAL JUDGEMENT

The petitioner has questioned the legality and validity of the detention order dated June 27,1997 passed by the detaining authority in exercise of its powers conferred by section 3(2) of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980. The petitioner was detained preventively. The petitioner was supplied the detention order and the grounds of detention dated 26.6.1997.

2. Mr. H.R.Prajapati, learned advocate for the petitioner has urged the only point amongst several points canvassed in the petition and that point is that the representation dated 14th August, 1997 (Annexure "C") addressed to the Secretary, Civil Supplies Department, Government of India, Krishi Bhavan, New Delhi has not been considered by the competent authority and as such, continued detention of the petitioner has become bad and invalid. Mr. S.C.Patel, learned Additional Standing Counsel for the 4th respondent Union of India has invited the attention of this Court to para-4 of the affidavit-in-reply dated 9.9.97 wherein it is inter alia recited that the representations dated 9.9.87 and 14.8.97 were received by the concerned Section through State Government vide letter dated 27.8.97 and the advocate of the detenu respectively. The deponent K.V.S.Rao, Under Secretary in the Department of Consumer Affairs, Ministry of Food and Consumer Affairs, New Delhi called for parawise remarks of the State Government as per telegram dated 1.9.97. It is further recited in the affidavit-in-reply that parawise comments of both the representations and English version of the representation dated 14.8.97 were still awaited.

3. The petitioner detenu has filed affidavit-in-rejoinder in reply to the aforesaid non-disposal of the representation dated 14.8.97 contending inter alia that the petitioner's advocate sent representation dated 14.8.97 by Speed post bearing No.1017 dated 14.8.97 to the 4th respondent and the said representation has been duly received in the office of the 4th respondent and the acknowledgment receipt duly signed by the addressee was received back in the office of the advocate of the petitioner on 20.8.97. It is therefore, clear that the 4th respondent must have received the said representation on or before 20th August, 1997. The petitioner has also annexed copy of the acknowledgment receipt showing that it was received back in the office of the advocate on 20th August, 1997. It is therefore, clear that the representation dated 14.8.1997 must have been received by the addressee before 20th August, 1997. There is therefore, no explanation of the respondents in regard to not disposing of the representation of the petitioner for the period from 20th August, 1997 to 1st September, 1997. The period during which the representation remained unattended is from 20th August, 1997 to 1st September, 1997 and that there is no explanation by the respondents. The valuable right of the petitioner-detenu under Article 22(5) of the Constitution of India is therefore, clearly violated and

the continued detention of the petitioner has become vulnerable.

4. In the above premises, the petition is allowed and the continued detention of the petitioner is held to be bad and invalid. The petitioner Shashikant Amarchand Hindocha is directed to be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly.

(D.G.Karia,J)

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